

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

NICE SYSTEMS, INC. and
NICE SYSTEMS LTD.,

Plaintiffs,

v.

Civil Action No. 06-311-JJF

WITNESS SYSTEMS, INC.,

Defendant.

DEFENDANT WITNESS SYSTEMS, INC.'S PROPOSED SPECIAL VERDICT FORM

DATED: December 3, 2007

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ATTORNEYS FOR DEFENDANT
WITNESS SYSTEMS, INC.

DEFENDANT’S PROPOSED FORM OF SPECIAL JURY VERDICT¹

We, the jury in the above-titled action, find the following special verdict on the questions submitted to us:

VERDICT REGARDING THE ’371 PATENT

A. Infringement

Question No. 1: Do you find by a preponderance of the evidence that Witness Systems infringed, literally, any of the following claims of U.S. Patent No. 5,396,371? (Answer “Yes” or “No.” A “Yes” answer is a finding for the plaintiffs, NICE; a “No” answer is a finding for the defendant, Witness Systems.)

Claim 1 Yes ____ No ____

Claim 8 Yes ____ No ____

Question No. 2: Do you find by a preponderance of the evidence that Witness Systems infringed, under the doctrine of equivalents, any of the following claims of U.S. Patent No. 5,396,371? (Answer “Yes” or “No.” A “Yes” answer is a finding for the plaintiffs, NICE; a “No” answer is a finding for the defendant, Witness Systems.)

Claim 1 Yes ____ No ____

Claim 8 Yes ____ No ____

Question No. 3: If your answer was “Yes” to questions 1 or 2, do you find by clear and convincing evidence that Witness Systems’ infringement was willful? (Answer “Yes” or “No.” A “Yes” answer is a finding for the plaintiffs, NICE; a “No” answer is a finding for the defendant, Witness Systems.)

Claim 1 Yes ____ No ____

Claim 8 Yes ____ No ____

¹ Witness Systems reserves the right to supplement and/or amend its proposed Verdict Form after the Court issues its claim construction ruling, after NICE further narrows the number of asserted claims, after NICE provides an element-by-element comparison of the asserted claims to specific accused products, and after expert reports and depositions are completed.

B. Invalidity

Question No. 4: Do you find by clear and convincing evidence that claims 1 and 8 of the '371 Patent are invalid because each claim element is anticipated by at least one prior art reference? (Answer "Yes" or "No." A "Yes" answer is a finding for the defendant, Witness Systems; a "No" answer is a finding for the plaintiffs, NICE.)

Claim 1 Yes ____ No ____

Claim 8 Yes ____ No ____

Question No. 5: Do you find by clear and convincing evidence that any of the following claims of the '371 Patent are invalid because each claim element is obvious in light of one or a combination of prior art references? (Answer "Yes" or "No." A "Yes" answer is a finding for the defendant, Witness Systems; a "No" answer is a finding for the plaintiffs, NICE.)

Claim 1 Yes ____ No ____

Claim 8 Yes ____ No ____

STOP: (a) If your answer to all parts of either question 4 or 5 was "Yes" please skip the section entitled, "C. Damages," and go directly to the section entitled "D. Equitable Defenses." Do not follow the instructions in either (b) or (c) below.

(b) If your answer to all parts of question 1 and 2 was "No" please skip the section entitled, "C. Damages," and go directly to the section entitled "D. Equitable Defenses." Do not follow the instructions in (c) below.

(c) If you found any claim(s) infringed (answering "Yes" in questions 1 or 2), and you found the same claim(s) to be valid (answering "No" for the same claim(s) in both questions 4 and 5), then go to the section entitled, "C. Damages." Otherwise, proceed directly to the section entitled "D. Equitable Defenses."

C. Damages

Question No. 6: Do you find by a preponderance of evidence that NICE has established the following elements, so as to be entitled to damages equaling NICE's lost profits resulting from Witness Systems' infringement of the '371 patent for the period after NICE acquired the '371 patent? (Answer "Yes" or "No." A "Yes" answer is a finding for NICE; a "No" answer is a finding for Witness Systems.)

(a) There were no acceptable non-infringing substitutes for the patented technology;

Yes ____ No ____

(b) there was a demand for the patented technology; and

Yes ____ No ____

(c) NICE had adequate manufacturing and marketing capacity to meet that demand.

Yes ____ No ____

Question No. 7: If your answers to all parts of question 6 are, "yes," what is the total amount of lost profits damages to which NICE is entitled as a result of Witness Systems' infringement of the patent for the period after NICE acquired the '371 patent?

Answer: _____

Question No. 8: Do you find by a preponderance of evidence that NICE has established the following elements, so as to be entitled to damages equaling Dictaphone's lost profits resulting from Witness Systems' infringement of the '371 patent for the period before NICE acquired the '371 patent? (Answer "Yes" or "No." A "Yes" answer is a finding for NICE; a "No" answer is a finding for Witness Systems.)

(a) There were no acceptable non-infringing substitutes for the patented technology;

Yes ____ No ____

(b) there was a demand for the patented technology; and

Yes ____ No ____

(c) NICE had adequate manufacturing and marketing capacity to meet that demand.

Yes ____ No ____

Question No. 9: If your answer to question 8 is, “yes,” what is the total amount of lost profits damages to which NICE is entitled as a result of Witness Systems’ infringement of the patent for the period before NICE acquired the ‘371 patent?

Answer: _____

Question No. 10: If you find that NICE is not entitled to lost profits damages for some or all of its damages, what is the total amount of reasonable royalty damages to which NICE is entitled as a result of Witness Systems’ infringement of the ‘371 patent?

Answer: _____

D. Equitable Defenses

Question No. 11: Do you find that NICE committed inequitable conduct before the Patent and Trademark Office during the prosecution of the '371 patent? (Answer "Yes" or "No." A "Yes" answer is a finding for the defendant, Witness Systems; a "No" answer is a finding for the plaintiffs, NICE.)

Yes ____ No ____

Question No. 12: Do you find by a preponderance of evidence that NICE unreasonably delayed filing this lawsuit for infringement of the '371 patent, and prejudiced Witness Systems, such that the defense of laches applies to NICE's claim of infringement of the '371 patent? (Answer "Yes" or "No." A "Yes" answer is a finding for the defendant, Witness Systems; a "No" answer is a finding for the plaintiffs, NICE.)

Yes ____ No ____

Question No. 13: Do you find by a preponderance of evidence that NICE unreasonably delayed filing this lawsuit for infringement of the '371 patent, Witness Systems relied on that conduct, and Witness Systems was prejudiced, such that the defense of equitable estoppel applies to NICE's claim of infringement of the '371 patent? (Answer "Yes" or "No." A "Yes" answer is a finding for the defendant, Witness Systems; a "No" answer is a finding for the plaintiffs, NICE.)

Yes ____ No ____

Question No. 14: Do you find by a preponderance of evidence that NICE acted inequitably, unfairly, or deceitfully, such that the defense of unclean hands applies to NICE's claim of infringement of the '371 patent? (Answer "Yes" or "No." A "Yes" answer is a finding for the defendant, Witness Systems; a "No" answer is a finding for the plaintiffs, NICE.)

Yes ____ No ____

VERDICT REGARDING THE '005 PATENT

A. Infringement

Question No. 15: Do you find by a preponderance of the evidence that Witness Systems infringed, literally, any of the following claims of U.S. Patent No. 5,819,005? (Answer “Yes” or “No.” A “Yes” answer is a finding for the plaintiffs, NICE; a “No” answer is a finding for the defendant, Witness Systems.)

Claim 1 Yes ____ No ____

Claim 8 Yes ____ No ____

Question No. 16: Do you find by a preponderance of the evidence that Witness Systems infringed, under the doctrine of equivalents, any of the following claims of U.S. Patent No. 5,819,005? (Answer “Yes” or “No.” A “Yes” answer is a finding for the plaintiffs, NICE; a “No” answer is a finding for the defendant, Witness Systems.)

Claim 1 Yes ____ No ____

Claim 8 Yes ____ No ____

Question No. 17: If your answer was “Yes” to any part of questions 15 or 16, do you find by clear and convincing evidence that Witness Systems’ infringement was willful? (Answer “Yes” or “No.” A “Yes” answer is a finding for the plaintiffs, NICE; a “No” answer is a finding for the defendant, Witness Systems.)

Claim 1 Yes ____ No ____

Claim 8 Yes ____ No ____

B. Invalidity

Question No. 18: Do you find by clear and convincing evidence that any of the following claims of the '005 Patent are invalid because each claim element is anticipated by at least one prior art reference? (Answer "Yes" or "No." A "Yes" answer is a finding for the defendant, Witness Systems; a "No" answer is a finding for the plaintiffs, NICE.)

Claim 1 Yes ____ No ____

Claim 8 Yes ____ No ____

Question No. 19: Do you find by clear and convincing evidence that any of the following claims of the '005 Patent are invalid because each claim element is obvious in light of one or a combination of prior art references? (Answer "Yes" or "No." A "Yes" answer is a finding for the defendant, Witness Systems; a "No" answer is a finding for the plaintiffs, NICE.)

Claim 1 Yes ____ No ____

Claim 8 Yes ____ No ____

STOP: (a) If your answer to all parts of either question 18 or 19 was "Yes" please skip the section entitled, "C. Damages," and go directly to the section entitled "D. Equitable Defenses." Do not follow the instructions in either (b) or (c) below.

(b) If your answer to all parts of question 15 and 16 was "No" please skip the section entitled, "C. Damages," and go directly to the section entitled "D. Equitable Defenses." Do not follow the instructions in (c) below.

(c) If you found any claim(s) infringed (answering "Yes" in questions 15 or 16), and you found the same claim(s) to be valid (answering "No" for the same claim(s) in both questions 18 and 19), then go to the section entitled, "C. Damages." Otherwise, proceed directly to the section entitled "D. Equitable Defenses."

C. Damages

Question No. 20: Do you find by a preponderance of evidence that NICE has established the following elements, so as to be entitled to damages equaling NICE's lost profits resulting from Witness Systems' infringement of the '005 patent for the period after NICE acquired the '005 patent? (Answer "Yes" or "No." A "Yes" answer is a finding for NICE; a "No" answer is a finding for Witness Systems.)

(a) There were no acceptable non-infringing substitutes for the patented technology;

Yes ____ No ____

(b) there was a demand for the patented technology; and

Yes ____ No ____

(c) NICE had adequate manufacturing and marketing capacity to meet that demand.

Yes ____ No ____

Question No. 21: If your answers to all parts of question 20 are, "yes," what is the total amount of lost profits damages to which NICE is entitled as a result of Witness Systems' infringement of the patent for the period after NICE acquired the '005 patent?

Answer: _____

Question No. 22: Do you find by a preponderance of evidence that NICE has established the following elements, so as to be entitled to damages equaling Dictaphone's lost profits resulting from Witness Systems' infringement of the '005 patent for the period before NICE acquired the '005 patent? (Answer "Yes" or "No." A "Yes" answer is a finding for NICE; a "No" answer is a finding for Witness Systems.)

(a) There were no acceptable non-infringing substitutes for the patented technology;

Yes ____ No ____

(b) there was a demand for the patented technology; and

Yes ____ No ____

(c) NICE had adequate manufacturing and marketing capacity to meet that demand.

Yes ____ No ____

Question No. 23: If your answer to question 22 is, “yes,” what is the total amount of lost profits damages to which NICE is entitled as a result of Witness Systems’ infringement of the patent for the period before NICE acquired the ‘005 patent?

Answer: _____

Question No. 24: If you find that NICE is not entitled to lost profits damages for some or all of its damages, what is the total amount of reasonable royalty damages to which NICE is entitled as a result of Witness Systems’ infringement of the ‘005 patent?

Answer: _____

D. Equitable Defenses

Question No. 25: Do you find by a preponderance of evidence that NICE unreasonably delayed filing this lawsuit for infringement of the '005 patent, and prejudiced Witness Systems, such that the defense of laches applies to NICE's claim of infringement of the '005 patent? (Answer "Yes" or "No." A "Yes" answer is a finding for the defendant, Witness Systems; a "No" answer is a finding for the plaintiffs, NICE.)

Yes ____ No ____

Question No. 26: Do you find by a preponderance of evidence that NICE unreasonably delayed filing this lawsuit for infringement of the '005 patent, Witness Systems relied on that conduct, and Witness Systems was prejudiced, such that the defense of equitable estoppel applies to NICE's claim of infringement of the '005 patent? (Answer "Yes" or "No." A "Yes" answer is a finding for the defendant, Witness Systems; a "No" answer is a finding for the plaintiffs, NICE.)

Yes ____ No ____

Question No. 27: Do you find by a preponderance of evidence that NICE acted inequitably, unfairly, or deceitfully, such that the defense of unclean hands applies to NICE's claim of infringement of the '005 patent? (Answer "Yes" or "No." A "Yes" answer is a finding for the defendant, Witness Systems; a "No" answer is a finding for the plaintiffs, NICE.)

Yes ____ No ____

VERDICT REGARDING THE '570 PATENT

A. Infringement

Question No. 28: Do you find by a preponderance of the evidence that Witness Systems infringed, literally, any of the following claims of U.S. Patent No. 6,249,570? (Answer "Yes" or "No." A "Yes" answer is a finding for the plaintiffs, NICE; a "No" answer is a finding for the defendant, Witness Systems.)

Claim 6 Yes ____ No ____

Claim 7 Yes ____ No ____

Question No. 29: Do you find by a preponderance of the evidence that Witness Systems infringed, under the doctrine of equivalents, any of the following claims of U.S. Patent No. 6,249,570? (Answer "Yes" or "No." A "Yes" answer is a finding for the plaintiffs, NICE; a "No" answer is a finding for the defendant, Witness Systems.)

Claim 6 Yes ____ No ____

Claim 7 Yes ____ No ____

Question No. 30: If your answer was "Yes" to any part of questions 28 or 29, do you find by clear and convincing evidence that Witness Systems' infringement was willful? (Answer "Yes" or "No." A "Yes" answer is a finding for the plaintiffs, NICE; a "No" answer is a finding for the defendant, Witness Systems.)

Claim 6 Yes ____ No ____

Claim 7 Yes ____ No ____

B. Invalidity

Question No. 31: Do you find by clear and convincing evidence that any of the following claims of the '570 Patent are invalid because each claim element is anticipated by at least one prior art reference? (Answer "Yes" or "No." A "Yes" answer is a finding for the defendant, Witness Systems; a "No" answer is a finding for the plaintiffs, NICE.)

Claim 6 Yes ____ No ____

Claim 7 Yes ____ No ____

Question No. 32: Do you find by clear and convincing evidence that any of the following claims of the '570 Patent are invalid because each claim element is obvious in light of one or a combination of prior art references? (Answer "Yes" or "No." A "Yes" answer is a finding for the defendant, Witness Systems; a "No" answer is a finding for the plaintiffs, NICE.)

Claim 6 Yes ____ No ____

Claim 7 Yes ____ No ____

STOP: (a) If your answer to all parts of either question 31 or 32 was "Yes" please skip the section entitled, "C. Damages," and go directly to the section entitled "D. Equitable Defenses." Do not follow the instructions in either (b) or (c) below.

(b) If your answer to all parts of question 28 and 29 was "No" please skip the section entitled, "C. Damages," and go directly to the section entitled "D. Equitable Defenses." Do not follow the instructions in (c) below.

(c) If you found any claim(s) infringed (answering "Yes" in questions 28 or 29), and you found the same claim(s) to be valid (answering "No" for the same claim(s) in both questions 31 and 32), then go to the section entitled, "C. Damages." Otherwise, proceed directly to the section entitled "D. Equitable Defenses."

C. Damages

Question No. 33: Do you find by a preponderance of evidence that NICE has established the following elements, so as to be entitled to damages equaling NICE's lost profits resulting from Witness Systems' infringement of the '570 patent for the period after NICE acquired the '570 patent? (Answer "Yes" or "No." A "Yes" answer is a finding for NICE; a "No" answer is a finding for Witness Systems.)

(a) There were no acceptable non-infringing substitutes for the patented technology;

Yes ____ No ____

(b) there was a demand for the patented technology; and

Yes ____ No ____

(c) NICE had adequate manufacturing and marketing capacity to meet that demand.

Yes ____ No ____

Question No. 34: If your answers to all parts of question 33 are, "yes," what is the total amount of lost profits damages to which NICE is entitled as a result of Witness Systems' infringement of the patent for the period after NICE acquired the '570 patent?

Answer: _____

Question No. 35: Do you find by a preponderance of evidence that NICE has established the following elements, so as to be entitled to damages equaling Dictaphone's lost profits resulting from Witness Systems' infringement of the '570 patent for the period before NICE acquired the '570 patent? (Answer "Yes" or "No." A "Yes" answer is a finding for NICE; a "No" answer is a finding for Witness Systems.)

(a) There were no acceptable non-infringing substitutes for the patented technology;

Yes ____ No ____

(b) there was a demand for the patented technology; and

Yes ____ No ____

(c) NICE had adequate manufacturing and marketing capacity to meet that demand.

Yes ____ No ____

Question No. 36: If your answer to question 35 is, “yes,” what is the total amount of lost profits damages to which NICE is entitled as a result of Witness Systems’ infringement of the patent for the period before NICE acquired the ‘570 patent?

Answer: _____

Question No. 37: If you find that NICE is not entitled to lost profits damages for some or all of its damages, what is the total amount of reasonable royalty damages to which NICE is entitled as a result of Witness Systems’ infringement of the ‘570 patent?

Answer: _____

D. Equitable Defenses

Question No. 38: Do you find by a preponderance of evidence that NICE unreasonably delayed filing this lawsuit for infringement of the '570 patent, and prejudiced Witness Systems, such that the defense of laches applies to NICE's claim of infringement of the '570 patent? (Answer "Yes" or "No." A "Yes" answer is a finding for the defendant, Witness Systems; a "No" answer is a finding for the plaintiffs, NICE.)

Yes ____ No ____

Question No. 39: Do you find by a preponderance of evidence that NICE unreasonably delayed filing this lawsuit for infringement of the '570 patent, Witness Systems relied on that conduct, and Witness Systems was prejudiced, such that the defense of equitable estoppel applies to NICE's claim of infringement of the '570 patent? (Answer "Yes" or "No." A "Yes" answer is a finding for the defendant, Witness Systems; a "No" answer is a finding for the plaintiffs, NICE.)

Yes ____ No ____

Question No. 40: Do you find by a preponderance of evidence that NICE acted inequitably, unfairly, or deceitfully, such that the defense of unclean hands applies to NICE's claim of infringement of the '570 patent? (Answer "Yes" or "No." A "Yes" answer is a finding for the defendant, Witness Systems; a "No" answer is a finding for the plaintiffs, NICE.)

Yes ____ No ____

VERDICT REGARDING THE '345 PATENT

A. Infringement

Question No. 41: Do you find by a preponderance of the evidence that Witness Systems infringed, literally, any of the following claims of U.S. Patent No. 6,728,345? (Answer "Yes" or "No." A "Yes" answer is a finding for the plaintiffs, NICE; a "No" answer is a finding for the defendant, Witness Systems.)

Claim 14 Yes ____ No ____

Claim 40 Yes ____ No ____

Claim 41 Yes ____ No ____

Claim 48 Yes ____ No ____

Question No. 42: Do you find by a preponderance of the evidence that Witness Systems infringed, under the doctrine of equivalents, any of the following claims of U.S. Patent No. 6,728,345? (Answer "Yes" or "No." A "Yes" answer is a finding for the plaintiffs, NICE; a "No" answer is a finding for the defendant, Witness Systems.)

Claim 14 Yes ____ No ____

Claim 40 Yes ____ No ____

Claim 41 Yes ____ No ____

Claim 48 Yes ____ No ____

Question No. 43: If your answer was "Yes" to any part of questions 41 or 42, do you find by clear and convincing evidence that Witness Systems' infringement was willful? (Answer "Yes" or "No." A "Yes" answer is a finding for the plaintiffs, NICE; a "No" answer is a finding for the defendant, Witness Systems.)

Claim 14 Yes ____ No ____

Claim 40 Yes ____ No ____

Claim 41 Yes ____ No ____

Claim 48 Yes ____ No ____

B. Invalidity

Question No. 44: Do you find by clear and convincing evidence that any of the following claims of the '345 Patent are invalid because each claim element is anticipated by at least one prior art reference? (Answer "Yes" or "No." A "Yes" answer is a finding for the defendant, Witness Systems; a "No" answer is a finding for the plaintiffs, NICE.)

Claim 14 Yes ____ No ____

Claim 40 Yes ____ No ____

Claim 41 Yes ____ No ____

Claim 48 Yes ____ No ____

Question No. 45: Do you find by clear and convincing evidence that any of the following claims of the '345 Patent are invalid because each claim element is obvious in light of one or a combination of prior art references? (Answer "Yes" or "No." A "Yes" answer is a finding for the defendant, Witness Systems; a "No" answer is a finding for the plaintiffs, NICE.)

Claim 14 Yes ____ No ____

Claim 40 Yes ____ No ____

Claim 41 Yes ____ No ____

Claim 48 Yes ____ No ____

STOP: (a) If your answer to all parts of either question 44 or 45 was "Yes" please skip the section entitled, "C. Damages," and go directly to the section entitled "D. Equitable Defenses." Do not follow the instructions in either (b) or (c) below.

(b) If your answer to all parts of question 41 and 42 was "No" please skip the section entitled, "C. Damages," and go directly to the section entitled "D. Equitable Defenses." Do not follow the instructions in (c) below.

(c) If you found any claim(s) infringed (answering "Yes" in questions 41 or 42), and you found the same claim(s) to be valid (answering "No" for the same claim(s) in both questions 44 and 45), then go to the section entitled, "C. Damages." Otherwise, proceed directly to the section entitled "D. Equitable Defenses."

C. Damages

Question No. 46: Do you find by a preponderance of evidence that NICE has established the following elements, so as to be entitled to damages equaling NICE's lost profits resulting from Witness Systems' infringement of the '345 patent for the period after NICE acquired the '345 patent? (Answer "Yes" or "No." A "Yes" answer is a finding for NICE; a "No" answer is a finding for Witness Systems.)

(a) There were no acceptable non-infringing substitutes for the patented technology;

Yes ____ No ____

(b) there was a demand for the patented technology; and

Yes ____ No ____

(c) NICE had adequate manufacturing and marketing capacity to meet that demand.

Yes ____ No ____

Question No. 47: If your answers to all parts of question 46 are, "yes," what is the total amount of lost profits damages to which NICE is entitled as a result of Witness Systems' infringement of the patent for the period after NICE acquired the '345 patent?

Answer: _____

Question No. 48: Do you find by a preponderance of evidence that NICE has established the following elements, so as to be entitled to damages equaling Dictaphone's lost profits resulting from Witness Systems' infringement of the '345 patent for the period before NICE acquired the '345 patent? (Answer "Yes" or "No." A "Yes" answer is a finding for NICE; a "No" answer is a finding for Witness Systems.)

(a) There were no acceptable non-infringing substitutes for the patented technology;

Yes ____ No ____

(b) there was a demand for the patented technology; and

Yes ____ No ____

(c) NICE had adequate manufacturing and marketing capacity to meet that demand.

Yes ____ No ____

Question No. 49: If your answer to question 48 is, “yes,” what is the total amount of lost profits damages to which NICE is entitled as a result of Witness Systems’ infringement of the patent for the period before NICE acquired the ‘345 patent?

Answer: _____

Question No. 50: If you find that NICE is not entitled to lost profits damages for some or all of its damages, what is the total amount of reasonable royalty damages to which NICE is entitled as a result of Witness Systems’ infringement of the ‘345 patent?

Answer: _____

D. Equitable Defenses

Question No. 51: Do you find by a preponderance of evidence that NICE unreasonably delayed filing this lawsuit for infringement of the '345 patent, and prejudiced Witness Systems, such that the defense of laches applies to NICE's claim of infringement of the '345 patent? (Answer "Yes" or "No." A "Yes" answer is a finding for the defendant, Witness Systems; a "No" answer is a finding for the plaintiffs, NICE.)

Yes ____ No ____

Question No. 52: Do you find by a preponderance of evidence that NICE unreasonably delayed filing this lawsuit for infringement of the '345 patent, Witness Systems relied on that conduct, and Witness Systems was prejudiced, such that the defense of equitable estoppel applies to NICE's claim of infringement of the '345 patent? (Answer "Yes" or "No." A "Yes" answer is a finding for the defendant, Witness Systems; a "No" answer is a finding for the plaintiffs, NICE.)

Yes ____ No ____

Question No. 53: Do you find by a preponderance of evidence that NICE acted inequitably, unfairly, or deceitfully, such that the defense of unclean hands applies to NICE's claim of infringement of the '345 patent? (Answer "Yes" or "No." A "Yes" answer is a finding for the defendant, Witness Systems; a "No" answer is a finding for the plaintiffs, NICE.)

Yes ____ No ____

VERDICT REGARDING THE '370 PATENT

A. Infringement

Question No. 54: Do you find by a preponderance of the evidence that Witness Systems infringed, literally, any of the following claims of U.S. Patent No. 6,785,370? (Answer "Yes" or "No." A "Yes" answer is a finding for the plaintiffs, NICE; a "No" answer is a finding for the defendant, Witness Systems.)

Claim 1 Yes ____ No ____

Claim 9 Yes ____ No ____

Claim 27 Yes ____ No ____

Question No. 55: Do you find by a preponderance of the evidence that Witness Systems infringed, under the doctrine of equivalents, any of the following claims of U.S. Patent No. 6,785,370? (Answer "Yes" or "No." A "Yes" answer is a finding for the plaintiffs, NICE; a "No" answer is a finding for the defendant, Witness Systems.)

Claim 1 Yes ____ No ____

Claim 9 Yes ____ No ____

Claim 27 Yes ____ No ____

Question No. 56: If your answer was "Yes" to any part of questions 54 or 55, do you find by clear and convincing evidence that Witness Systems' infringement was willful? (Answer "Yes" or "No." A "Yes" answer is a finding for the plaintiffs, NICE; a "No" answer is a finding for the defendant, Witness Systems.)

Claim 1 Yes ____ No ____

Claim 9 Yes ____ No ____

Claim 27 Yes ____ No ____

B. Invalidity

Question No. 57: Do you find by clear and convincing evidence that any of the following claims of the '370 Patent are invalid because each claim element is anticipated by at least one prior art reference? (Answer "Yes" or "No." A "Yes" answer is a finding for the defendant, Witness Systems; a "No" answer is a finding for the plaintiffs, NICE.)

Claim 1 Yes ____ No ____

Claim 9 Yes ____ No ____

Claim 27 Yes ____ No ____

Question No. 58: Do you find by clear and convincing evidence that any of the following claims of the '370 Patent are invalid because each claim element is obvious in light of one or a combination of prior art references? (Answer "Yes" or "No." A "Yes" answer is a finding for the defendant, Witness Systems; a "No" answer is a finding for the plaintiffs, NICE.)

Claim 1 Yes ____ No ____

Claim 9 Yes ____ No ____

Claim 27 Yes ____ No ____

STOP: (a) If your answer to all parts of either question 57 or 58 was "Yes" please skip the section entitled, "C. Damages," and go directly to the section entitled "D. Equitable Defenses." Do not follow the instructions in either (b) or (c) below.

(b) If your answer to all parts of question 54 and 55 was "No" please skip the section entitled, "C. Damages," and go directly to the section entitled "D. Equitable Defenses." Do not follow the instructions in (c) below.

(c) If you found any claim(s) infringed (answering "Yes" in questions 54 or 55), and you found the same claim(s) to be valid (answering "No" for the same claim(s) in both questions 57 and 58), then go to the section entitled, "C. Damages." Otherwise, proceed directly to the section entitled "D. Equitable Defenses."

C. Damages

Question No. 59: Do you find by a preponderance of evidence that NICE has established the following elements, so as to be entitled to damages equaling NICE's lost profits resulting from Witness Systems' infringement of the '370 patent for the period after NICE acquired the '370 patent? (Answer "Yes" or "No." A "Yes" answer is a finding for NICE; a "No" answer is a finding for Witness Systems.)

(a) There were no acceptable non-infringing substitutes for the patented technology;

Yes ____ No ____

(b) there was a demand for the patented technology; and

Yes ____ No ____

(c) NICE had adequate manufacturing and marketing capacity to meet that demand.

Yes ____ No ____

Question No. 60: If your answers to all parts of question 59 are, "yes," what is the total amount of lost profits damages to which NICE is entitled as a result of Witness Systems' infringement of the patent for the period after NICE acquired the '370 patent?

Answer: _____

Question No. 61: Do you find by a preponderance of evidence that NICE has established the following elements, so as to be entitled to damages equaling Dictaphone's lost profits resulting from Witness Systems' infringement of the '370 patent for the period before NICE acquired the '370 patent? (Answer "Yes" or "No." A "Yes" answer is a finding for NICE; a "No" answer is a finding for Witness Systems.)

(a) There were no acceptable non-infringing substitutes for the patented technology;

Yes ____ No ____

(b) there was a demand for the patented technology; and

Yes ____ No ____

(c) NICE had adequate manufacturing and marketing capacity to meet that demand.

Yes ____ No ____

Question No. 62: If your answer to question 61 is, “yes,” what is the total amount of lost profits damages to which NICE is entitled as a result of Witness Systems’ infringement of the patent for the period before NICE acquired the ‘370 patent?

Answer: _____

Question No. 63: If you find that NICE is not entitled to lost profits damages for some or all of its damages, what is the total amount of reasonable royalty damages to which NICE is entitled as a result of Witness Systems’ infringement of the ‘370 patent?

Answer: _____

D. Equitable Defenses

Question No. 64: Do you find by a preponderance of evidence that NICE unreasonably delayed filing this lawsuit for infringement of the '370 patent, and prejudiced Witness Systems, such that the defense of laches applies to NICE's claim of infringement of the '370 patent? (Answer "Yes" or "No." A "Yes" answer is a finding for the defendant, Witness Systems; a "No" answer is a finding for the plaintiffs, NICE.)

Yes ____ No ____

Question No. 65: Do you find by a preponderance of evidence that NICE unreasonably delayed filing this lawsuit for infringement of the '370 patent, Witness Systems relied on that conduct, and Witness Systems was prejudiced, such that the defense of equitable estoppel applies to NICE's claim of infringement of the '370 patent? (Answer "Yes" or "No." A "Yes" answer is a finding for the defendant, Witness Systems; a "No" answer is a finding for the plaintiffs, NICE.)

Yes ____ No ____

Question No. 66: Do you find by a preponderance of evidence that NICE acted inequitably, unfairly, or deceitfully, such that the defense of unclean hands applies to NICE's claim of infringement of the '370 patent? (Answer "Yes" or "No." A "Yes" answer is a finding for the defendant, Witness Systems; a "No" answer is a finding for the plaintiffs, NICE.)

Yes ____ No ____

VERDICT REGARDING THE '372 PATENT**A. Infringement**

Question No. 67: Do you find by a preponderance of the evidence that Witness Systems infringed, literally, any of the following claims of U.S. Patent No. 6,775,372? (Answer “Yes” or “No.” A “Yes” answer is a finding for the plaintiffs, NICE; a “No” answer is a finding for the defendant, Witness Systems.)

Claim 1 Yes ____ No ____

Claim 6 Yes ____ No ____

Claim 14 Yes ____ No ____

Claim 15 Yes ____ No ____

Claim 19 Yes ____ No ____

Claim 33 Yes ____ No ____

Question No. 68: Do you find by a preponderance of the evidence that Witness Systems infringed, pursuant to the doctrine of equivalents, any of the following claims of U.S. Patent No. 6,775,372? (Answer “Yes” or “No.” A “Yes” answer is a finding for the plaintiffs, NICE; a “No” answer is a finding for the defendant, Witness Systems.)

Claim 1 Yes ____ No ____

Claim 6 Yes ____ No ____

Claim 14 Yes ____ No ____

Claim 15 Yes ____ No ____

Claim 19 Yes ____ No ____

Claim 33 Yes ____ No ____

Question No. 69: If your answer was “Yes” to any part of questions 67 or 68, do you find by clear and convincing evidence that Witness Systems’ infringement was willful? (Answer “Yes” or “No.” A “Yes” answer is a finding for the plaintiffs, NICE; a “No” answer is a finding for the defendant, Witness Systems.)

Claim 1 Yes ____ No ____

Claim 6 Yes ____ No ____

Claim 14 Yes ____ No ____

Claim 15 Yes ____ No ____

Claim 19 Yes ____ No ____

Claim 33 Yes ____ No ____

B. Invalidity

Question No. 70: Do you find by clear and convincing evidence that any of the following claims of the '372 Patent are invalid because each claim element is anticipated by at least one prior art reference? (Answer "Yes" or "No." A "Yes" answer is a finding for the defendant, Witness Systems; a "No" answer is a finding for the plaintiffs, NICE.)

Claim 1 Yes ____ No ____

Claim 6 Yes ____ No ____

Claim 14 Yes ____ No ____

Claim 15 Yes ____ No ____

Claim 19 Yes ____ No ____

Claim 33 Yes ____ No ____

Question No. 71: Do you find by clear and convincing evidence that any of the following claims of the '372 Patent are invalid because each claim element is obvious in light of one or a combination of prior art references? (Answer "Yes" or "No." A "Yes" answer is a finding for the defendant, Witness Systems; a "No" answer is a finding for the plaintiffs, NICE.)

Claim 1 Yes ____ No ____

Claim 6 Yes ____ No ____

Claim 14 Yes ____ No ____

Claim 15 Yes ____ No ____

Claim 19 Yes ____ No ____

Claim 33 Yes ____ No ____

STOP: (a) If your answer to all parts of either question 70 or 71 was "Yes" please skip the section entitled, "C. Damages," and go directly to the section entitled "D. Equitable Defenses." Do not follow the instructions in either (b) or (c) below.

(b) If your answer to all parts of question 67 and 68 was "No" please skip the section entitled, "C. Damages," and go directly to the section entitled "D. Equitable Defenses." Do not follow the instructions in (c) below.

(c) If you found any claim(s) infringed (answering "Yes" in questions 67 or 68), and you found the same claim(s) to be valid (answering "No" for the same claim(s) in both questions 70 and 71), then go to the section entitled, "C. Damages." Otherwise, proceed directly to the section entitled "D. Equitable Defenses."

C. Damages

Question No. 72: Do you find by a preponderance of evidence that NICE has established the following elements, so as to be entitled to damages equaling NICE's lost profits resulting from Witness Systems' infringement of the '372 patent for the period after NICE acquired the '372 patent? (Answer "Yes" or "No." A "Yes" answer is a finding for NICE; a "No" answer is a finding for Witness Systems.)

(a) There were no acceptable non-infringing substitutes for the patented technology;

Yes ____ No ____

(b) there was a demand for the patented technology; and

Yes ____ No ____

(c) NICE had adequate manufacturing and marketing capacity to meet that demand.

Yes ____ No ____

Question No. 73: If your answers to all parts of question 72 are, "yes," what is the total amount of lost profits damages to which NICE is entitled as a result of Witness Systems' infringement of the patent for the period after NICE acquired the '372 patent?

Answer: _____

Question No. 74: Do you find by a preponderance of evidence that NICE has established the following elements, so as to be entitled to damages equaling Dictaphone's lost profits resulting from Witness Systems' infringement of the '372 patent for the period before NICE acquired the '372 patent? (Answer "Yes" or "No." A "Yes" answer is a finding for NICE; a "No" answer is a finding for Witness Systems.)

(a) There were no acceptable non-infringing substitutes for the patented technology;

Yes ____ No ____

(b) there was a demand for the patented technology; and

Yes ____ No ____

(c) NICE had adequate manufacturing and marketing capacity to meet that demand.

Yes ____ No ____

Question No. 75: If your answer to question 74 is, “yes,” what is the total amount of lost profits damages to which NICE is entitled as a result of Witness Systems’ infringement of the patent for the period before NICE acquired the ‘372 patent?

Answer: _____

Question No. 76: If you find that NICE is not entitled to lost profits damages for some or all of its damages, what is the total amount of reasonable royalty damages to which NICE is entitled as a result of Witness Systems’ infringement of the ‘372 patent?

Answer: _____

D. Equitable Defenses

Question No. 77: Do you find by a preponderance of evidence that NICE unreasonably delayed filing this lawsuit for infringement of the '372 patent, and prejudiced Witness Systems, such that the defense of laches applies to NICE's claim of infringement of the '372 patent? (Answer "Yes" or "No." A "Yes" answer is a finding for the defendant, Witness Systems; a "No" answer is a finding for the plaintiffs, NICE.)

Yes ____ No ____

Question No. 78: Do you find by a preponderance of evidence that NICE unreasonably delayed filing this lawsuit for infringement of the '372 patent, Witness Systems relied on that conduct, and Witness Systems was prejudiced, such that the defense of equitable estoppel applies to NICE's claim of infringement of the '372 patent? (Answer "Yes" or "No." A "Yes" answer is a finding for the defendant, Witness Systems; a "No" answer is a finding for the plaintiffs, NICE.)

Yes ____ No ____

Question No. 79: Do you find by a preponderance of evidence that NICE acted inequitably, unfairly, or deceitfully, such that the defense of unclean hands applies to NICE's claim of infringement of the '372 patent? (Answer "Yes" or "No." A "Yes" answer is a finding for the defendant, Witness Systems; a "No" answer is a finding for the plaintiffs, NICE.)

Yes ____ No ____

VERDICT REGARDING THE '920 PATENT

Question No. 80: Do you find by a preponderance of the evidence that Witness Systems infringed, literally, any of the following claims of U.S. Patent No. 6,870,920? (Answer "Yes" or "No." A "Yes" answer is a finding for the plaintiffs, NICE; a "No" answer is a finding for the defendant, Witness Systems.)

Claim 1 Yes ____ No ____

Claim 3 Yes ____ No ____

Claim 16 Yes ____ No ____

Claim 18 Yes ____ No ____

Claim 21 Yes ____ No ____

Question No. 81: Do you find by a preponderance of the evidence that Witness Systems infringed, under the doctrine of equivalents, any of the following claims of U.S. Patent No. 6,870,920? (Answer "Yes" or "No." A "Yes" answer is a finding for the plaintiffs, NICE; a "No" answer is a finding for the defendant, Witness Systems.)

Claim 1 Yes ____ No ____

Claim 3 Yes ____ No ____

Claim 16 Yes ____ No ____

Claim 18 Yes ____ No ____

Claim 21 Yes ____ No ____

Question No. 82: If your answer was "Yes" to any part of questions 80 or 81, do you find by clear and convincing evidence, that Witness Systems' infringement was willful? (Answer "Yes" or "No." A "Yes" answer is a finding for the plaintiffs, NICE; a "No" answer is a finding for the defendant, Witness Systems.)

Claim 1 Yes ____ No ____

Claim 3 Yes ____ No ____

Claim 16 Yes ____ No ____

Claim 18 Yes ____ No ____

Claim 21 Yes ____ No ____

B. Invalidity

Question No. 83: Do you find by clear and convincing evidence that any of the following claims of the '920 Patent are invalid because each claim element is anticipated by at least one prior art reference? (Answer "Yes" or "No." A "Yes" answer is a finding for the defendant, Witness Systems; a "No" answer is a finding for the plaintiffs, NICE.)

Claim 1 Yes ____ No ____

Claim 3 Yes ____ No ____

Claim 16 Yes ____ No ____

Claim 18 Yes ____ No ____

Claim 21 Yes ____ No ____

Question No. 84: Do you find by clear and convincing evidence that any of the following claims of the '920 Patent are invalid because each claim element is obvious in light of one or a combination of prior art references? (Answer "Yes" or "No." A "Yes" answer is a finding for the defendant, Witness Systems; a "No" answer is a finding for the plaintiffs, NICE.)

Claim 1 Yes ____ No ____

Claim 3 Yes ____ No ____

Claim 16 Yes ____ No ____

Claim 18 Yes ____ No ____

Claim 21 Yes ____ No ____

STOP: (a) If your answer to all parts of either question 83 or 84 was "Yes" please skip the section entitled, "C. Damages," and go directly to the section entitled "D. Equitable Defenses." Do not follow the instructions in either (b) or (c) below.

(b) If your answer to all parts of question 80 and 81 was "No" please skip the section entitled, "C. Damages," and go directly to the section entitled "D. Equitable Defenses." Do not follow the instructions in (c) below.

(c) If you found any claim(s) infringed (answering "Yes" in questions 80 or 81), and you found the same claim(s) to be valid (answering "No" for the same claim(s) in both questions 83 and 84), then go to the section entitled, "C. Damages." Otherwise, proceed directly to the section entitled "D. Equitable Defenses."

C. Damages

Question No. 85: Do you find by a preponderance of evidence that NICE has established the following elements, so as to be entitled to damages equaling NICE's lost profits resulting from Witness Systems' infringement of the '920 patent for the period after NICE acquired the '920 patent? (Answer "Yes" or "No." A "Yes" answer is a finding for NICE; a "No" answer is a finding for Witness Systems.)

(a) There were no acceptable non-infringing substitutes for the patented technology;

Yes ____ No ____

(b) there was a demand for the patented technology; and

Yes ____ No ____

(c) NICE had adequate manufacturing and marketing capacity to meet that demand.

Yes ____ No ____

Question No. 86: If your answers to all parts of question 85 are, "yes," what is the total amount of lost profits damages to which NICE is entitled as a result of Witness Systems' infringement of the patent for the period after NICE acquired the '920 patent?

Answer: _____

Question No. 87: Do you find by a preponderance of evidence that NICE has established the following elements, so as to be entitled to damages equaling Dictaphone's lost profits resulting from Witness Systems' infringement of the '920 patent for the period before NICE acquired the '920 patent? (Answer "Yes" or "No." A "Yes" answer is a finding for NICE; a "No" answer is a finding for Witness Systems.)

(a) There were no acceptable non-infringing substitutes for the patented technology;

Yes ____ No ____

(b) there was a demand for the patented technology; and

Yes ____ No ____

(c) NICE had adequate manufacturing and marketing capacity to meet that demand.

Yes ____ No ____

Question No. 88: If your answer to question 87 is, “yes,” what is the total amount of lost profits damages to which NICE is entitled as a result of Witness Systems’ infringement of the patent for the period before NICE acquired the ‘920 patent?

Answer: _____

Question No. 89: If you find that NICE is not entitled to lost profits damages for some or all of its damages, what is the total amount of reasonable royalty damages to which NICE is entitled as a result of Witness Systems’ infringement of the ‘920 patent?

Answer: _____

D. Equitable Defenses

Question No. 90: Do you find by a preponderance of evidence that NICE unreasonably delayed filing this lawsuit for infringement of the '920 patent, and prejudiced Witness Systems, such that the defense of laches applies to NICE's claim of infringement of the '920 patent? (Answer "Yes" or "No." A "Yes" answer is a finding for the defendant, Witness Systems; a "No" answer is a finding for the plaintiffs, NICE.)

Yes ____ No ____

Question No. 91: Do you find by a preponderance of evidence that NICE unreasonably delayed filing this lawsuit for infringement of the '920 patent, Witness Systems relied on that conduct, and Witness Systems was prejudiced, such that the defense of equitable estoppel applies to NICE's claim of infringement of the '920 patent? (Answer "Yes" or "No." A "Yes" answer is a finding for the defendant, Witness Systems; a "No" answer is a finding for the plaintiffs, NICE.)

Yes ____ No ____

Question No. 92: Do you find by a preponderance of evidence that NICE acted inequitably, unfairly, or deceitfully, such that the defense of unclean hands applies to NICE's claim of infringement of the '920 patent? (Answer "Yes" or "No." A "Yes" answer is a finding for the defendant, Witness Systems; a "No" answer is a finding for the plaintiffs, NICE.)

Yes ____ No ____

VERDICT REGARDING THE '109 PATENT

A. Infringement

Question No. 93: Do you find by a preponderance of the evidence that Witness Systems infringed, literally, any of the following claims of U.S. Patent No. 7,010,109? (Answer “Yes” or “No.” A “Yes” answer is a finding for the plaintiffs, NICE; a “No” answer is a finding for the defendant, Witness Systems.)

Claim 1 Yes ____ No ____

Claim 3 Yes ____ No ____

Claim 6 Yes ____ No ____

Question No. 94: Do you find by a preponderance of the evidence that Witness Systems infringed, under the doctrine of equivalents, any of the following claims of U.S. Patent No. 7,010,109? (Answer “Yes” or “No.” A “Yes” answer is a finding for the plaintiffs, NICE; a “No” answer is a finding for the defendant, Witness Systems.)

Claim 1 Yes ____ No ____

Claim 3 Yes ____ No ____

Claim 6 Yes ____ No ____

Question No. 95: If your answer was “Yes” to any part of questions 93 or 94, do you find by clear and convincing evidence that Witness Systems’ infringement was willful? (Answer “Yes” or “No.” A “Yes” answer is a finding for the plaintiffs, NICE; a “No” answer is a finding for the defendant, Witness Systems.)

Claim 1 Yes ____ No ____

Claim 3 Yes ____ No ____

Claim 6 Yes ____ No ____

B. Invalidity

Question No. 96: Do you find by clear and convincing evidence that any of the following claims of the '109 Patent are invalid because each claim element is anticipated by at least one prior art reference? (Answer "Yes" or "No." A "Yes" answer is a finding for the defendant, Witness Systems; a "No" answer is a finding for the plaintiffs, NICE.)

Claim 1 Yes ____ No ____

Claim 3 Yes ____ No ____

Claim 6 Yes ____ No ____

Question No. 97: Do you find by clear and convincing evidence that any of the following claims of the '109 Patent are invalid because each claim element is obvious in light of one or a combination of prior art references? (Answer "Yes" or "No." A "Yes" answer is a finding for the defendant, Witness Systems; a "No" answer is a finding for the plaintiffs, NICE.)

Claim 1 Yes ____ No ____

Claim 3 Yes ____ No ____

Claim 6 Yes ____ No ____

STOP: (a) If your answer to all parts of either question 96 or 97 was "Yes" please skip the section entitled, "C. Damages," and go directly to the section entitled "D. Equitable Defenses." Do not follow the instructions in either (b) or (c) below.

(b) If your answer to all parts of question 93 and 94 was "No" please skip the section entitled, "C. Damages," and go directly to the section entitled "D. Equitable Defenses." Do not follow the instructions in (c) below.

(c) If you found any claim(s) infringed (answering "Yes" in questions 93 or 94), and you found the same claim(s) to be valid (answering "No" for the same claim(s) in both questions 96 and 97), then go to the section entitled, "C. Damages." Otherwise, proceed directly to the section entitled "D. Equitable Defenses."

C. Damages

Question No. 95: Do you find by a preponderance of evidence that NICE has established the following elements, so as to be entitled to damages equaling NICE's lost profits resulting from Witness Systems' infringement of the '109 patent? (Answer "Yes" or "No." A "Yes" answer is a finding for NICE; a "No" answer is a finding for Witness Systems.)

(a) There were no acceptable non-infringing substitutes for the patented technology;

Yes ____ No ____

(b) there was a demand for the patented technology; and

Yes ____ No ____

(c) NICE had adequate manufacturing and marketing capacity to meet that demand.

Yes ____ No ____

Question No. 96: If your answers to all parts of question 95 are, "yes," what is the total amount of lost profits damages to which NICE is entitled as a result of Witness Systems' infringement of the '109 patent?

Answer: _____

Question No. 97: If you find that NICE is not entitled to lost profits damages for some or all of its damages, what is the total amount of reasonable royalty damages to which NICE is entitled as a result of Witness Systems' infringement of the '109 patent?

Answer: _____

D. Equitable Defenses

Question No. 98: Do you find by a preponderance of evidence that NICE unreasonably delayed filing this lawsuit for infringement of the '109 patent, and prejudiced Witness Systems, such that the defense of laches applies to NICE's claim of infringement of the '109 patent? (Answer "Yes" or "No." A "Yes" answer is a finding for the defendant, Witness Systems; a "No" answer is a finding for the plaintiffs, NICE.)

Yes ____ No ____

Question No. 99: Do you find by a preponderance of evidence that NICE unreasonably delayed filing this lawsuit for infringement of the '109 patent, Witness Systems relied on that conduct, and Witness Systems was prejudiced, such that the defense of equitable estoppel applies to NICE's claim of infringement of the '109 patent? (Answer "Yes" or "No." A "Yes" answer is a finding for the defendant, Witness Systems; a "No" answer is a finding for the plaintiffs, NICE.)

Yes ____ No ____

Question No. 100: Do you find by a preponderance of evidence that NICE acted inequitably, unfairly, or deceitfully, such that the defense of unclean hands applies to NICE's claim of infringement of the '109 patent? (Answer "Yes" or "No." A "Yes" answer is a finding for the defendant, Witness Systems; a "No" answer is a finding for the plaintiffs, NICE.)

Yes ____ No ____

Dated: December 3, 2007

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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of December, 2007, I electronically filed with the Clerk of Court the **DEFENDANT WITNESS SYSTEMS, INC.'S PROPOSED SPECIAL VERDICT FORM** using CM/ECF which will send electronic notification of such filing(s) to the below-listed Delaware counsel. In addition, the filing will also be sent via hand delivery.

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I also certify that on December 3, 2007, I have sent by electronic mail and U.S. First Class Mail, the document(s) to the following non-registered participants:

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